

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

VICTOR NUTTER,

Plaintiff,

v.

CIVIL ACTION NO. 6:08-cv-01280

JUDGE ROBERT A. WATERS, et al.,

Defendants.

ORDER

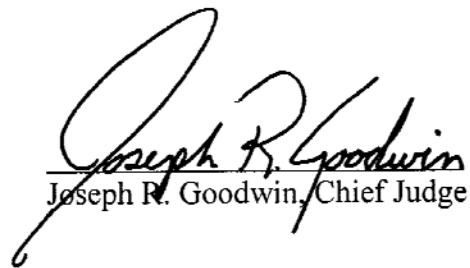
This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court find that the plaintiff's Complaint fails to state a claim upon which relief can be granted, is an unauthorized successive petition for a writ of habeas corpus, and is barred by absolute judicial immunity. The plaintiff filed an Objection to the Magistrate Judge's Proposed Findings and Recommendation. In the Objection, the plaintiff argues that the Magistrate Judge overlooked his argument that the defendant judges and justice intentionally denied the plaintiff's constitutional rights and ignored West Virginia criminal court procedures.

The plaintiff's Complaint names as defendants the judges and justice who presided over his trial and played a role in his conviction. The plaintiff is generally objecting to the dismissal of the case based on *Pierson v. Ray*, which stated that judges are immune from liability. 386 U.S. 547, 554 (1967). Precedent is clear, however, that judges are immune from liability "even if such acts were

allegedly done either maliciously or corruptly.” *King v. Myers*, 973 F.2d 354, 356 (4th Cir. 1992) (citing *Pierson*, 386 U.S. at 554). I **FIND** that the plaintiff’s claim is barred by absolute judicial immunity.

The plaintiff’s failure to object to the remainder of the magistrate judge’s report may be deemed a waiver on appeal of the substance of that portion of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the remainder of the Magistrate Judge’s findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **DENIES** the plaintiff’s Application to Proceed without Prepayment of Fees and Costs [Docket 1] and the plaintiff’s Motion for a Hearing [Docket 4]. The court **DISMISSES** this action from the docket and **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 27, 2009



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge